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DFW  
3743

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,225	02/21/2002	Frank Lovstad	9663.57USWO	1828

7590 09/21/2005

Merchant Gould Smith Edell Welter & Schmid  
3100 Norwest Center  
Minneapolis, MN 55402-4131

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OCT 17 2005

EXAMINER

LEWIS, AARON J

ART UNIT PAPER NUMBER

3743

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/069,225

Applicant(s)

LOVSTAD, FRANK

Examiner

AARON J. LEWIS

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bliss et al. ('890) in view of Davis et al. ('885) and Lordo ('371).

As to claim 1, Bliss et al. disclose a hand held, portable accessory device (col.1, lines 6-10) for a manual resuscitation unit for neonatal or premature infants with precise control of manual generated low tidal volumes in connection with the resuscitation in the first phase of life, characterized by a self regulating maximum pressure/volume valve (#14 and col.4, lines 59-61) connected to a per se conventional resuscitation equipment for blow off of excess air.

The difference between Bliss et al. and claim 1 is the capability of calculation of the compliance of the lungs for preventing volutrauma and/or barotrauma.

To the extent, if any, that valve (14) of Bliss et al. is not readable upon a self-regulating pressure/volume valve, resort is had to Lordo (col.14, lines 19-27), in a portable resuscitation device which teaches a self-regulating pressure/volume valve (148) for the purpose of venting excess pressure which may otherwise be inadvertently delivered to a patient (e.g. an infant or child). It would have been obvious to modify the exhaust valve (14) of Bliss et al. to substitute any well known type of exhaust valve

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including the pop-off valve of Lordo because it would have provided a means for venting excess pressure which may otherwise be inadvertently delivered to a patient (e.g. an infant or child)

Davis et al. (col.1, lines 11-16) teach the calculation and continuous display of compliance of the lungs for the purpose of advising medical personnel of a patient's lung condition so that adjustments in the patient's respiratory therapy may be made.

It would have been obvious to modify the control of Bliss et al. to include the capability of calculating patient lung compliance because it would have advised medical personnel of a patient's lung condition so that adjustments in the patient's respiratory therapy may be made as taught by Davis et al..

As to claim 2, Bliss et al. disclose a portable unit that is battery powered (24), the control unit (20) for input of maximum values for pressure or volume (col.2, lines 46-50), rhythm indicating unit (22) with rhythm indicated through sound and light signals (26), a display (e.g. #28 of Davis et al.) for displaying compliance, a flow sensor (12) for measuring pressure and air flow, giving signals to the control unit (20), an electronic valve actuator (see electrical connections between control unit 20 and valve actuator of valve 14 of Bliss et al.) for precise and rapid response for blowing off excess volume and pressure of air.

### ***Conclusion***


3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant portable resuscitators.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (571) 272-4795. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
AARON J. LEWIS  
Primary Examiner  
Art Unit 3743

Aaron J. Lewis  
September 16, 2005

10/069225  
JC10 Rec'd PCT/PTO 21 FEB 2002

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<b>Notice of References Cited</b>	Application/Control No. 10/069,225		Applicant(s)/Patent Under Reexamination LOVSTAD, FRANK	
	Examiner AARON J. LEWIS		Art Unit 3743	Page 1 of 2

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-3,414,896	12-1968	VICTOR GLICK ROY; et. al.	128/204.21
	B	US-3,613,677	10-1971	Blasko, Joseph	128/204.21
	C	US-4,031,885	06-1977	Davis et al.	600/533
	D	US-4,196,725	04-1980	Gunderson, Arthur M.	128/205.25
	E	US-4,239,039	12-1980	Thompson, Harris A.	128/205.24
	F	US-4,286,589	09-1981	Thompson, Harris A.	128/202.22
	G	US-4,287,886	09-1981	Thompson, Harris A.	128/202.22
	H	US-4,297,999	11-1981	Kitrell, John V.	128/205.16
	I	US-4,301,793	11-1981	Thompson, Harris S.	128/204.21
	J	US-4,491,423	01-1985	Cohen, Stanley	368/107
	K	US-4,635,631	01-1987	Izumi, Kazuo	128/204.23
	L	US-4,782,831	11-1988	Gallant, John H.	128/204.18
	M	US-4,940,049	07-1990	Kirchgeorg et al.	128/205.24

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
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	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



<b>Notice of References Cited</b>	Application/Control No. 10/069,225		Applicant(s)/Patent Under Reexamination LOVSTAD, FRANK	
	Examiner AARON J. LEWIS		Art Unit 3743	Page 2 of 2

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-5,316,009	05-1994	Yamada, Yoshitsugu	600/533
	B	US-5,398,676	03-1995	Press et al.	128/204.23
	C	US-5,496,257	03-1996	Kelly, Kenneth B.	601/41
	D	US-5,540,221	07-1996	Kaigler et al.	128/205.13
	E	US-5,546,934	08-1996	Kaigler et al.	128/205.13
	F	US-5,558,371	09-1996	Lordo, Richard J.	285/114
	G	US-5,787,880	08-1998	Swanson et al.	128/202.28
	H	US-6,067,984	05-2000	Piper, Samuel David	128/205.24
	I	US-6,289,890	09-2001	Bliss et al.	128/203.11
	J	US-6,609,518	08-2003	Lamb, Derek	128/204.25
	K	US-6,848,444	02-2005	Smith et al.	128/204.18
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

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